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ABSTRACT

Approximately 200,000 persons aged 60 and older are arrested annually in the United States and over 50,000 of these persons are formally accused of a crime each year. An exploratory study was conducted to probe the adversarial posture of elderly misdemeanant defendants. An analysis of 4,976 cases drawn from the official dockets of the Dade County Court, Miami, Florida, was undertaken to determine the extent to which the elderly avail themselves of three due process protections: (1) the not guilty plea; (2) attorney representation; and (3) jury trials. Variances by age, sex, and race over a 10-year period (1974-1984) were statistically tested using standard X super 2 procedures and related Phi super 2 tests of association. Results showed that elderly misdemeanant defendants were not only nonadversarial, but they were consistently, if not significantly, less adversarial than similarly accused younger defendants. Recent changes, however, suggest that a new breed of elderly misdemeanant defendants is emerging, one more likely to assert innocence and to demand due process protections. The findings suggest that further research and a more rationally conceived and effective elderly justice system are needed. (Author/ABB)

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The Role of the Elderly Defendant In The Criminal Court:

Full Dress Adversary or Reluctant Penitent?

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ABSTRACT

This exploratory study probes the adversarial posture of elderly misdemeanants defendants. Analyzing 4976 cases drawn from the official dockets of the Dade County Court, Miami, Florida, we determine the extent to which the elderly avail themselves of three due process protections: 1) the not guilty plea; 2) attorney representation; and 3) jury trials. Variances by age, sex and race over a ten year period (1974-1984) are statistically tested using standard X^2 procedures and related Phi^2 tests of association. Results show that elderly misdemeanant defendants are not only nonadversarial, but they are consistently, if not significantly, less adversarial than similarly accused younger defendants. Recent changes, however, indicate that a new breed of elderly misdemeanant defendants is emerging, one more likely to assert their innocence and to demand due process protections. Some speculative remarks regarding possible causal explanations and demarcating areas for further research are provided. The study concludes with several practical suggestions for a more rationally conceived and effective elderly justice system.

Attorneys; Courts; Crime; Plea; Trial

Introduction

Approximately 200,000 persons ages 60 and older are arrested annually in the United States. Of these, 17% involve serious felonies (e.g., murder, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson). The remaining 83% represent a full gamut of lesser felonies and misdemeanors, but especially drunkenness, disorderly conduct, driving while intoxicated, petit theft (shoplifting), and simple assault (Table 1).

Based upon our understanding of criminal case mortality rates, this translates into over 50,000 elderly individuals who are formally accused of a crime each year. Of these, at least 36,500 (73%) plead guilty, 7,000 (14%) request a bench trial, and 3,500 (7%), request a jury trial. Only a nominal 6% are dismissed (President's Crime Commission, 1967). Regardless, even the more tireless archivist, enlisting the assistance of a computerized search, will unearth only a handful of titles which attend to the plight of these elderly defendants as they respond to the bailiff's call and step forward for their day in court. One such title is Bachand's (1983), "The Elderly Offender: A Question of Leniency in Criminal Processing". This creative and seminal assault upon our ignorance about the behavior of elderly defendants strikes down numerous popular myths. Of especial interest, he finds that elderly defendants, contrary to common beliefs, are not only more likely to be convicted than comparably accused younger defendants, but they also more severely sanctioned. In a related study, Feinberg and Khosla (1985) observe that of the 97 judges they surveyed: 1) almost 50% are not especially sympathetic towards the elderly; 2) most sanction elderly shoplifters with fines despite beliefs that their thefts are motivated by economic need; and 3) older judges are not more likely than younger colleagues to favor special treatment for elderly defendants. The few additional articles available on

elderly defendants tend to be more concerned with their mental competency and related legal policy issues than with behavioral aspects of their courtroom confrontation (e.g., Cohen, 1984).

If there is a poverty of scholarly research on elderly defendants, any belief that one may learn about them from a wealth of actuarial tables lining the pages of annual state court reports is quickly frustrated. Such basic descriptive data as the number of elderly defendants processed by state courts, the charges against them, the proportion represented by an attorney, the frequency of jury trials, and sanctions imposed are neither readily nor reliably available. Information regarding variance by sex, race, and chronological period in how these cases are played out in the courtroom is virtually unreported.

None of this is to deny the robust literature regarding the legal and extra-legal factors which effect the decision to obtain legal counsel (e.g., Lochnor, 1975; Landinsky, 1976). Similarly, we acknowledge a wealth of scholarship invested in unraveling the process by which plea decisions are reached (e.g., Newman, 1956; Blumberg, 1979; Feeley, 1982), the consequences of pleading not guilty in terms of sanction severity (e.g., Brereton & Casper, 1982), and abrogated due process rights (e.g., Uviller, 1977). The decision to go to trial - the quintessential adversarial decision and related ratiocinations of the jury, its impact and value have also been the subject of extensive empirical research and critical debate (e.g., Kalven & Zeisel, 1966). Moreover, while each of these decisions has generated research which attends to the possible influence of the defendant's sex or race (e.g., Greenwood, Et Al, 1976; Armstrong, 1977; Mather, 1979; Jendrek, 1983), his advanced age for the most part is not even conceptualized as relevant.

Objectives

This exploratory study introduces the elderly as consumers of criminal justice services. In particular, we seek to chart patterns and trends in the

use elderly misdemeanant defendants are making of three basic and traditional due process protections: 1) the right to plead not guilty; 2) the right to be represented by an attorney; and 3) the right to a jury trial. Although no formally derived and theoretically based hypotheses are generated and tested, three empirical questions guide our research: 1) "Are elderly misdemeanant defendants likely to avail themselves of their rights to plead not guilty, be represented by an attorney, and have a jury trial?"; 2) "Are elderly misdemeanant defendants more likely to plead not guilty, be represented by an attorney, or request a jury trial today than they were in years past?"; and 3) "Are significantly larger proportions of elderly misdemeanant defendants as compared to younger misdemeanant defendants relinquishing their rights to plead not guilty, be represented by an attorney, and have a jury trial?" Concomitantly, variances by sex, race, and over time are traced and tested for statistical significance.

Objectives Justified

Six major justifications may be offered for undertaking this research: 1) It provides basic descriptive data about a little known but growing group of role players and consumers in the criminal justice system, i.e., elderly misdemeanant defendants; 2) It portends to contribute to our knowledge about abrogated due process protections and related allegations of discrimination with respect to minority groups caught up in the criminal justice system; 3) It provides data valuable to communities seeking to improve their ability to deliver legal services to elderly residents; 4) It has important implications for improving lawyer-client relationships, especially where strains may be due to age related stereotypes, prejudices, role reversals, and related dilemmas; 5) It is a logical correlative to addressing popular myths that the elderly are less likely to be convicted and/or severely sanctioned than similarly accused younger defendants; 6) It contributes to the continuing debate about whether we are witnessing the twilight of the adversary system as Blumberg (1970 contends,

or the full-flowering of professionalism within the criminal justice enterprise as Feeley (1979) avers.

Method

The findings of this study are based upon an analysis of 4,976 elderly defendants (ages sixty and over) who have been charged with committing a misdemeanor and whose name has been entered onto the dockets of the Fade County Court, Miami, Florida. This figure constitutes an aggregate of three separate populations of elderly misdemeanant defendants as follows: 1974, N=1545); 1979, N=1754; 1984, N=1677. Of these, 81% are males and 19% are females. By race, 84% are white, 15% are black, and the remainder are either American Indian, (N=2) or Unknown, (N=7). Observed frequencies in the use of the not guilty plea, presence of an attorney, and requests for jury trial are calculated for each annual population as well as for the aggregated sample. Using a series of two-by-two and two-by-three tables, variances by sex, race, and over time (1974-1984) are then described and tested for statistical significance with the help of standard chi-square procedures. Since the size of our test group occasionally becomes very large, and since large sample size alone can generate statistically significant chi-squares, further statistical controls in the form of a phi-square test of association is introduced. The .05 level of significance is the predetermined critical cut-off score in all these analyzes. Lastly, we selected out a sample of 12,675 misdemeanants under sixty years of age. Each of these has been accused of at least one of the following four violations; 1) Disorderly Intoxication; 2) Disorderly Conduct; 3) Petit Theft; and 4) Simple Assault. Correlatively, we subsampled 1225 of our elderly misdemeanant defendants, all of who had been similarly charged. Age-based differentials in the use of the not guilty plea, attorney representation, and jury as compared to bench trials are then explored and tested for significance with respect to each of these misdemeanors. This procedure was followed to

control for the fact that younger defendants generally reflect a different profile of misdemeanor involvement than older defendants, and also because certain misdemeanor data for younger defendants was inaccessible. It is to be noted, however, that these are exactly the kinds of misdemeanors for which the elderly are typically arrested. The one major omission, Driving While Intoxicated, is due to the absence of available data.

Data Problems, Limitations, and Ameliorative Strategies

Several conceptual and technical problems were encountered in securing the data for this study. Chief among the conceptual problems—and related ameliorative strategies—are the following:

1. There is an important obfuscation among our concepts: we cannot be certain that the court strategies described and the variances analyzed reflect the behavior of elderly defendants, their attorneys, or some unspecified and possibly complex combination of the two. While the decision to retain counsel especially seems to be controlled by the defendant, an abundance of empirical research suggests the plea decision and the type of trial chosen are strongly influenced or even determined by the attorney (e.g., Rosenthal, 1974; Mather, 1979). While this dilemma is not resolved, it is ameliorated. Regardless of whose behavior they represent, the findings still carry heuristic value and important policy implications.

2. In conceptualizing whether or not elderly defendants are adversarial we ignore the fact that there is variance in the meaning as well as the intensity of such behavior. When a defendant pleads guilty, for example, it may be with great remorse, a public and personal acknowledgement of culpability and a powerful yearning to make amends. Alternatively, the plea may be a perfunctory statement, uttered only for its efficiency in obviating the often painful and costly process of a trial (including more severe sanctions), reflecting a cavalier disregard for the nature of the violation and the significance of the victim (Blumberg, 1979). Similar points might be made

about the decision to retain an attorney, or to request a jury trial. Are these strategies vigorously sought and applied, or are they only half-hearted efforts at defense? Indeed, they might even be foisted upon an otherwise passive, contrite, and remorseful defendant by a more aggressive, avaricious, and adversarily oriented defense counsel.

3. We do not address the possibility that some elderly misdemeanant defendants may start out as avid adversaries professing their innocence, demanding due process, retaining legal counsel, and "threatening" repeated appeals until vindicated, but in time the desire for closure and the social, psychological, and fiscal costs often quell such adversarial fervor. Even the most vivid not guilty plea has been known to wane into a colorless but terminal guilty plea. These "converts" to a guilty plea, both the more and the less reluctant among them, are otherwise ignored in this study.

4. Whether or not a defendant assumes an adversarial posture in responding to formal charges leveled against him is greatly influenced by the nature and severity of the anticipated sanction. The decision to focus upon elderly misdemeanants is partially an acknowledgement of this reality. The adversarial propensity of elderly felons reflects not so much a special psycho-social disposition associated with aging as much as a ubiguitous concern to avoid potentially catastrophic sanctions. Threatened with significant encrouchments upon his life, liberty, or property, even the more passive defendant, or those most cynical about the chances of "fighting the system" will assume an adversarial posture. Misdemeanors, on the other hand, typically carry only nominal sanctions. Indeed, the process of enlisting one's constitutional protections is said to be more punitive than any sanction that may be applied to the convicted misdemeanant (Feeley, 1979). Under such circumstances, misdemeanors appear more sensitive than felonies to extra-sanction considerations, including any psycho-socially based predilection by defendants to assume an adversarial posture in court. However, even

misdemeanors vary among themselves in their prescribed sanctions. They also vary from one historical period to the next, and from one age, sex, or racial group to the next (e.g., Hagen, 1974; Chesney-Lind, 1977; Holmes, 1984). Regrettably, none of this variance is controlled. Nor do we address the more social-psychological dimensions of this issue, including the defendant's awareness of the prescribed sanctions, predictions about the probable sanctions they will receive, and subjective estimations of the severity of those sanctions. Mitigating these deficiencies, we observe that the range of sanction severity for misdemeanors is limited. In this particular jurisdiction, misdemeanor sanctions range from a nominal fine to a maximum of one year in jail and a $1000 dollar fine.

5. Lastly, although we seek to illuminate the courtroom strategy of elderly misdemeanant defendants, we cannot know for certain if the original charge is a misdemeanor, or a felony which has been plea bargained down to a misdemeanor. While most felony pleas are products of some type of plea bargaining, it rarely involves transforming the felony down to a misdemeanor. More typically, it means that other closely related felony charges are dropped, or there is a promise of concurrent sentences, or the assurance of a reduced sentence (Newman, 1956).

Chief among the technical difficulties-and related ameliorative strategies-are the following:

1. Where elderly misdemeanant defendants have multiple charges against them only the first - and typically the most serious - is used. Thus, an individual charged with both simple assault and drunkenness, will probably enter our computations solely as one instance of simple assault. The drunkenness incident would not be entered. This difficulty is minimized, however, several considerations. First, unlike felonies, when charging a defendant with misdemeanors the strategy of "overcharging" i.e., adding extra charges to the violation of immediate concern so as to increase the

prosecutor's plea bargaining power is less relevant. Second, our analyses and discussions are couched in terms of elderly misdemeanants in general. That additional misdemeanor charges are lost for certain defendants is less relevant. They are misdemeanants regardless of whether they commit one misdemeanor or a multitude of them. Third, neither multiple counts of the same misdemeanor, nor multiple charges for a variety of misdemeanors is common, at least not in this court. When either situation occurs, how defendants respond to the first charge (e.g., the plea, presence or absence of counsel, type of trial requested), typically repeats itself with respect to the other charges.

2. Elderly misdemeanant defendants charged on two or more separate occasions within the same year are counted as "new misdemeanants" each time they are charged. No effort is made to control for recidivism. Consequently, an increase in not guilty pleas, for example, may not necessarily mean that more individual elderly misdemeanant defendants are pleading not guilty. It may simply reflect greater recidivism among those who do plead not guilty.

3. The defendant's original plea may change. There is evidence, however, of administrative negligence in recording these changes. This could be a significant dilemma were we working with felons. Felons typically plead not guilty initially but usually plea bargain into guilty pleas. Unlike felons, misdemeanants usually plead guilty ab initio and never change that plea. Thus, while failures to record changes in the original plea do occur, they are rare and unlikely to bias our results.

Findings

1. The Plea (Guilty vs. Not Guilty

Plea information is available for 3978 elderly misdemeanant defendants. Of these approximately 92% (3665) plead guilty (including nolo contendere pleas), and only 8% (313) plead not guilty. Elderly female are slightly more likely than elderly male misdemeanant defendants to plead not guilty, 16% (112/702) as compared to 6% (204/3276) respectively. Prima facia, this difference is

statistically significant (X^2=68.96). However, controlling for the influence of sample size reveals only a weak association between sex and plea among elderly misdemeanant defendants, phi-square = 0.017. Elderly black and elderly white misdemeanant defendants are about equally likely to plead guilty, 93% and 92% respectively. The difference is not statistically significant (X^2=1.02). Essentially similar patterns emerge for each annual population studied (Table 2).

Generally speaking, older misdemeanant defendants are less likely to plead not guilty than similarly accused younger defendants, 13.68% verses 17.37%. The difference is not statistically significant, X^2=7.92. This pattern repeats itself when comparing older and younger male as well as older and younger female misdemeanant defendants. It also occurs when holding race constant, i.e., both older white and older black misdemeanant defendants are less likely to plead not guilty than their younger counterparts (Figure #1). Measuring the significance of these variances results in the following X^2 relationships: older verses younger males, X^2=13.85; older verses younger females, X^2=.026; older verses younger whites, X^2=8.77; older verses younger blacks, X^2=0.38. Admittedly, only the variance between older and younger males proves to be statistically significant, and even this disappears when sample size is controlled, phi-square=.002. At the same time, it is impressive to realize that regardless of the offense, the direction of the variance is consistently the same: older misdemeanant defendants always lag behind younger defendants in entering not guilty pleas. For example, only 6.5% of the older disorderly intoxication defendants as compared to 9% of the younger ones plead not guilty.

Over the past ten years the proportion of elderly misdemeanant defendants pleading not guilty has increased. It went from only 2% in 1974 to 7% in 1979, to a high of 19% in 1984. Correlatively the rate of increase in not guilty pleas is also increasing, especially especially between 1979 and 1984.

Approximately equal increases are manifest for elderly male and elderly female misdemeanant defendants. More specifically, the proportion of elderly female misdemeanant defendants who plead not guilty increased by 100% between 1974 and 1979, going from 6.10% to 13.06%. It almost doubles again during the next five years, reaching a high of 20.59% in 1984. Similarly, only 2.06% of the elderly male misdemeanant defendants plead not guilty in 1974. By 1979, though still rare among elderly male misdemeanant defendants, not guilty pleas had more than doubled to 4.88%. Over the next five years it dramatically rises, reaching a high of 17.8% in 1984. Although a statistically significant X^2=221.27 results when exploring changes in the ratio of not guilty to guilty pleas during this decade, further statistical analysis reveals that this relationship is only a function of large population size, (phi square =0.06). Controlling for sex reveals that elderly females are significantly more likely to plead not guilty in 1984 than in either 1979 or 1974 (X^2=12.99). However, the association is weak (phi-square = 0.136). Elderly male misdemeanant defendants are also significantly more likely to plead not guilty in 1984 than in either 1979 or 1974 (X^2=193.45). However, again, the association, though stronger than is the case for females, remains slight (phi-square = 0.243). Ultimately, a greater proportion of elderly female than elderly male misdemeanant defendants plead not guilty, but elderly males are rapidly closing the gap.

Increasingly larger proportions of elderly black misdemeanant defendants are observed to plead not guilty, going from a low of 1.51% in 1974 to a high of 21.95% in 1984. The X^2= 56.61 emerging when correlating pleas for elderly black misdemeanant defendants over time (1974-1984) is statistically significant, but the relationship is only a function of the large populations tallied, phi-square =0.294. Similarly, in recent years greater proportions of elderly white misdemeanant defendants are pleading not guilty. The respective proportions for 1974, 1979, and 1984 are 2.47% 6.81% and 18.16%. Interestingly, by 1984 a greater proportion of elderly black than elderly white misdemeanant

defendants plead not guilty (Table 2). Correlating changes in the proportion of guilty to not guilty pleas for elderly white misdemeanant defendants over the past ten years results in a X^2= 168.13. This is statistically significant, but the association is weak, phi-square= 0.225.

In sum, the vast majority of elderly misdemeanant defendants like most other misdemeanant defendants plead guilty. Indeed, there is evidence to suggest that older misdemeanant defendants are actually somewhat more likely to plead guilty than similarly accused younger defendants. Elderly female are slightly more likely than elderly male misdemeanant defendants to plead not guilty, but the difference is not statistically significant. Also, no statistically significant difference is observed between elderly black and elderly white misdemeanant defendants in their likelihood of pleading guilty (or not guilty). Lastly, from 1974 to 1984 the proportion of elderly misdemeanant defendants pleading not guilty has increased. This is true for males and females alike, and for blacks as well as whites, and by approximately the same proportions. However, these increases are not statistically significant.

2. Represented vs. Unrepresented By An Attorney

Attorneys are rarely present in cases involving elderly misdemeanant defendants. Of the 4971 elderly misdemeanant defendants for whom the relevant data is available, only 7% are represented by an attorney. Male are slightly less likely than female elderly misdemeanant defendants to be represented by an attorney, 6.5% as compared to 10.1%. Correlating elderly misdemeanant defendants by sex and presence or absence of an attorney results in a X^2 = 14.91. While statistically significant, it is only a function of the sample size. Appropriate controls reveal that these variables are only weakly associated (phi-square = .003). In sum, elderly male and female misdemeanant defendants are about equally rare in their likelihood of being represented by an attorney.

Black and white elderly misdemeanant defendants are also about equally

likely - or unlikely - to be represented by an attorney 6.5% and 7.3% respectively. The difference is not statistically significant, X^2= 0.55.

Interestingly, our data suggest that older misdemeanant defendants are only half as likely as a comparative group of younger misdemeanant defendants to be represented by an attorney, 12% verses 23%. This difference is statistically significant, X^2=72.69, but the association between defendants' age and the likelihood of being represented by an attorney is weak, phi-square=.003. Similarly, older males and females, and older whites and blacks are each less likely to be represented by an attorney than their respective younger counterparts (Figure #2). Variance by age is much stronger in distinguishing those who are likely to be represented by an attorney than is observed for the not guilty plea. Indeed, in each instance it proves to be statistically significant. In no instance, however, is there a strong association between age and the likelihood that a misdemeanant defendant will be represented by an attorney. The respective chi-squares and their corresponding phi-squares are as follows: older verses younger males, X^2=20.33, phi-square=.001; older verses younger females, X^2=38.32, Phi-square=.006; older verses younger whites, X^2=53.06, Phi-square=.002; older verses younger blacks, X^2=15.45, Phi-square=.004.

These patterns are essentially replicated when each of our populations is independently analyzed. More significant, however, are several interesting trends that emerge when comparing patterns over the past decade. First, the proportion of elderly misdemeanor defendants represented by an attorney has steadily increased. It was less than 1% in 1974, but over 13% in 1984. This increase is observed for both elderly male and elderly female misdemeanant defendants. However, it is accelerating more rapidly for elderly males. This is especially evident for the 1979-1984 quinquennium. During this period, the rate of representation by attorneys in misdemeanor cases doubled for males but only increased by 50% (from 9% to 13%) for females. We also observe an

increase in the proportion of both elderly black and elderly white misdemeanant defendants who retain legal representation in these cases. In 1974 less than 1% of either racial group are represented by attorneys. Five years later, 9.6% of elderly black and 6.5% of elderly white misdemeanant defendants are so represented. While the difference is not statistically significant in either instance (X^2=.001 and X^2=3.50 respectively), it does appear that elderly black misdemeanant defendants are more rapidly moving toward an adversarial posture by retaining attorneys to represent their interests than is true for their elderly white counterparts. Admittedly, however, the rate of increase for elderly black misdemeanant defendants then decelerates during the subsequent quinquennium, i.e., 1979-1984, while the comparable figure for elderly whites more than doubles (Table 3).

In sum, attorneys are rarely retained by elderly misdemeanant defendants, males or females, blacks or whites. Males are slightly less likely than females to have an attorney but ultimately the defendant's sex is a poor predictor of the likelihood of their retaining an attorney. Race is also a poor predictor. Neither elderly black nor elderly white misdemeanant defendants are especially likely to be represented by an attorney. Nor do we observe any statistically significant difference in this attribute by race. In addition, older misdemeanant defendants are much less likely than younger misdemeanant defendants to be represented by an attorney. This is true for both males and females, blacks and whites. Finally, the proportion of elderly misdemeanant defendants who are represented by an attorney considerably increases between 1974 and 1984. This trend is about equally true for elderly male and female misdemeanant defendants. It is also true for both blacks and whites, although the pattern is slightly stronger for whites than blacks (Table 3). Regardless, despite the consistency of these increases, in no instance are they statistically significant.

3. <u>Type of Trial (Jury vs. Bench)</u>

Jury trials are very rare events in the life of the misdemeanor court, and elderly misdemeanant defendants are among those least likely to request one. Of the 313 elderly misdemeanant defendants in our aggregated sample who plead not guilty, only 45 (14.4%) request a jury trial. The vast majority (85.6%) request a bench trial. Elderly male and female misdemeanant defendants are about equally likely to request jury trials. The respective proportions are 14.7% (30/204) and 13.8% (15/109). Correlating the type of trial requested by sex of the elderly misdemeanant defendant results in a statistically significant X^2=33.10. However, further statistical testing indicates that the association between these two variables is weak, (phi-square= 0.11). In sum, the defendant's sex is a poor predictor of the type of trial elderly misdemeanants request when pleading not guilty (Table 4). Interestingly, elderly black are much more likely than elderly white misdemeanant defendants to request a jury trial. Forty percent (18/45) of the former but only 10.1% (27/267) of the latter request such trials. The difference is statistically significant (X^2=27.87). However, controlling for sample size reveals only a weak association between an elderly misdemeanant defendant's race and the type of trial requested, phi-square= 0.09 (Table 4). Lastly, older misdemeanant defendants are only half as likely as younger misdemeanant defendants to request a jury trial, 2.3% verses 5.6%. The difference is statistically significant, X^2=15.48, but the association between age and the the type of trial requested ultimately proves to be almost non existent, phi-square=0.0001. Essentially this same pattern holds for older as compared with younger males (2.5% verses 5.2%) and older as compared with younger females (2.0% verses 5.5%). Moreover, the variance within each sex group is statistically significant, X^2=7.44 and X^2=14.62 respectively. In neither case, however, is there a strong association between the misdemeanant defendant's age and the type of trial requested chi-square=.002 and phi-square=.003 respectively.

Younger white misdemeanant defendants are significantly more likely than

older white misdemeanant defendants to seek a jury trial, 5.25% verses 1.92 percent respectively. In keeping with what is now a familiar pattern, the difference is statistically significant, X^2=16.92, but controlling for sample size reveals only a weak association between age of the defendant and the type of trial requested, phi-square=.001. Quite unexpected, however, is the finding that older and younger black misdemeanant defendants are about equally likely to request a jury trial, 6.0& % and 5.3% respectively. Indeed, this is the first instance where elderly misdemeanant defendants are actually more likely than those who are younger to take an adversarial stand (Figure #3).

From 1974 to 1984 elderly female misdemeanor defendants requesting a jury trial increased from zero to 17.4%. Comparable figures for elderly male misdemeanor defendants indicate a parallel increase, from a low of 3.4% in 1974 to a high of 18.4% in 1984. Essentially, both elderly male and female misdemeanor defendants are growing increasingly likely to request a jury trial. There is some slight indication, however, that elderly female misdemeanor defendants though behind elderly male misdemeanor defendants in this dimension of adversarial propensity, are closing the gap between them. The reader is cautioned that these percentages are unstable due to the small absolute numbers. They therefore only suggest rather than predict the direction of any anticipated changes (Table 4).

The proportion of elderly black misdemeanant defendants who plead not guilty and request a jury trial is also steadily increasing. None request such a trial in 1974. By 1979, 43% (6/14) request one, followed by 44% (12/27) in 1984. Elderly white misdemeanant defendants exhibit a similar though less dramatic increase. Only 3% of this group request a jury trial in 1974. By 1979 it rose to 6.9% and in 1984 it reaches a high of 13% (Table 4).

Tracing and comparing the adversarial profiles of our three separate populations reveals a number of interesting continuities and variances. Use of jury trials was so rare in 1974 for either males (N=1) or females (N=0) as to

disallow testing for statistical significance. However, chi-square tests for 1979 and 1984 suggest there is no statistically significant relationship between the sex of the elderly misdemeanant defendant and the type of trial requested, (X^2=0.33 and X^2= 0.02 for each year respectively). Race, on the other hand, is significantly related to the type of trial requested in both 1979 (X^2=13.13) and 1984 (X^2=14.96). (Jury trials in 1974 were so rare for white (N=1) and black (N=0) misdemeanant defendants alike that a stable statistical test of significant differences could not be generated.)

Conclusion

The central thrust of our findings is that the vast majority of elderly misdemeanant defendants do not partake in the advantages of basic due process protections. Prima facia, their response to charges leveled against them in court is non adversarial: they typically plead guilty (92%), are not represented by an attorney (93%), and only occasionally request jury trials (14%).

Elderly female are more likely than elderly male misdemeanant defendants to be adversarial, as measured by two of our criteria, i.e., pleading not guilty and being represented by an attorney. On the other hand, elderly black and elderly white misdemeanant defendants are about equally likely to be adversarial as measured by these same criteria. The one possible exception is that elderly black misdemeanant defendants are somewhat more likely to go to jury trial. In no instance, however, does either sex or race prove statistically significant in predicting the elderly misdemeanant's adversarial propensity.

While this essentially describes the posture of most misdemeanant defendants, it is also important to note that older misdemeanant defendants are consistently less likely to be adversarial as measured by each of our indices than younger misdemeanant defendants. This is especially important to keep in mind as it calls into question any notion that the nominal nature of the

misdemeanant violation and its limited consequences is the source of any arrested truth seeking behavior within the criminal justice system. Even more impressive, is the realization that in recent years the elderly are growing increasingly adversarial as misdemeanant defendants. Indeed, we appear to be witnessing their metamorphosis into a new breed of elderly misdemeanant defendants, one which is a less reluctant adversary in the criminal courts. Correlatively, they are more likely to make use of due process protections today than a decade ago. Moreover this is true of elderly male and elderly female misdemeanant defendants, blacks as well as whites, and by approximately equal proportions. This makes for an especially interesting paradox: at a time when most criminal and civil cases are moving away from adversarial resolutions and toward justice by negotiation, our elderly misdemeanant defendants are pressing for full-dress adversarial courtroom confrontations.

A major advantage of undertaking exploratory research is that it licenses considerable intellectual speculation. When that research concerns a subject about which there is limited scientific knowledge but extensive public curiosity, we are almost conscripted into making some wholesale speculations about a plethora of alternative data interpretations, possible causal relationships, and policy implications. We offer the foregoing statements as reasonable possibilities, and as fertile areas for future empirical research.

Why elderly misdemeanant defendants do not partake in these basic due process protections remains an open question, one not directly addressed in the course of conducting our research. Potentially relevant independent variables include: 1) fear of escalating an otherwise already difficult and embarrassing situation; 2) feelings of powerlessness; 3) fear of encuring a more severe sanction; 4) the desire for closure and resolving the matter as quickly as possible; 5) inadequate psychic, fiscal, and social coping resources, especially with respect to negotiating the bureaucracy of the justice setting; and, 6) the mundane inconveniences related to maintaining a strong defense

(e.g., extra trips to the court, special filing fees, language limitations, and transportation problems).

Concomitantly, explaining why elderly misdemeanant defendants are not as likely to be adversarial as younger misdemeanant defendants brings to the fore such ideas as: 1)age-based discrimination; 2) alternative, historically based and culturally learned beliefs regarding the proper role of an elderly misdemeanant defendant; and 3) differences caused by the aging process.

The fact that elderly female are slightly more likely to be adversarial than elderly male misdemeanant defendants could be a function of the greater likelihood that females in general are more inclined to engage in help-seeking behavior. This is likely maximized in situations where males are traditionally viewed by females as having expertise, e.g., automobile repairs, stocks and bonds, business management, and, very possibly, the law and its related bureaucracy. From a somewhat different perspective, we might also predict that elderly females are more likely to have lived a law-abiding existence than males. This, in turn, could steel them against accepting their own criminal culpability when it does occur.

Lastly, a combination of developments may prove fertile when seeking possible causes for recent increases in the adversarial propensity of elderly misdemeanant defendants. Among these are the following: 1) a better educated, more affluent, socially integrated and involved population of elderly; 2) a greater sense of power, self confidence, and autonomy among the elderly and, 3) changing role expectations for the elderly, including greater aggressiveness, increased familiarity with bureaucracies, and improved physical mobility. Possibly, we are encountering a variation on a common theme: the civil rights movement translated in terms of elderly needs and interests. One might also draw an interesting parallel between the elderly's increasing use of the not guilty plea, attorney representation, and jury trial, their awakening concern about age-based discrimination in housing and at the work place, and related

civil actions brought at their initiative. The status position of the elderly in our society is in flux, perhaps more so today than ever before. Their orientation toward the law and other forms of social control may also be changing.

A number of practical suggestions for improving the administration of justice with respect to the elderly emerge from this study. First, judges, prosecutors, public defenders, private attorneys, law professors, and related supportive personnel, especially those serving the legal needs of communities with large elderly populations, would profit from a diversified education program designed to provide the skills, insights, and rationales necessary for mediating justice in elderly offender cases. This could be achieved using several pedagogic formats. For example, education workshops are urged to provide legal practitioners with special skills in such areas as: 1) interrogating the elderly; 2) coping with the fears and concerns of elderly clients in criminal and civil cases; 3) plea negotiating in elderly offender cases; 4) developing sanction guidelines for convicted elderly offenders; and, 5) jury selection in elderly defendant cases. In addition, seminars may be organized so that legal scholars, practitioners, and those responsible for planning and administrating legal services at various political levels may share ideas about the most appropriate and efficient way to process elderly offenders. Court diversionary programs, filtering certain elderly offenders through the family or probate court, the preventive education of potential elderly criminals, and even the creation of an elderly justice system parallel to the juvenile justice system are among the kinds of issues and policy matters which lend themselves to such seminars.

Second, whether the elderly in fact enjoy ready access to the legal services they want must be empirically evaluated. Where access is poor and we suspect that it is especially poor in retirement communities where residents are recent migrants and lack the indigenous family and friendship ties through whom

attorneys are typically located and retained (Landinsky, 1976)- remedial strategies need to be organized and implemented. Legal out-reach services for the elderly are not nearly as well developed in most places as comparable services by the medical profession. Shopping mall locations, periodic volunteer work at senior centers, and provision of legal directories to relocating elderly residents are just three of the more creative strategies the legal profession could use to improve the dissemination of information about its practitioners and to popularize community based legal clinics and related legal aide services. Venue flexibility to allow "face saving," and similar strategies to protect the elderly from the often catastrophic and irreparable loss of reputation which frequently accompanies the public display of an aggressive adversarial defense also deserve further consideration.

Third, public administrators responsible for selecting judges and hiring public defenders and assistant prosecutors should consider the candidate's ability to relate with the community's elderly and to carry out their role requirements when cases involve the elderly as defendants, witnesses, and victims. Just as some practitioners work better with juvenile offenders, others with female offenders, and still others with various minorities, and just as these abilities are articulated where possible for the benefit of all parties, so too should similar considerations be made in meeting the criminal justice needs of the elderly.

Finally, further research into elderly offenders in general, and their behavior at various stages of the criminal justice process is strongly prescribed. Concomitantly, more needs to be known about the beliefs, attitudes, and responses of the various role players who implement that process with respect to elderly offenders. How, for instance, does an attorney's relative youthfulness effect his ability to plea bargain with an elderly client? Are public defenders especially sympathetic toward their elderly clients? Do prosecutors curry disfavor among voters for pursuing elderly

offender cases? Does a criminal conviction impact upon the elderly in significantly different ways as compared to similarly convicted younger defendants? Hopefully, scholarly inquiry into such questions will continue to find interest and support, not only among gerontologists and sociologists who have pioneered the study of elderly criminality, but also among those who can bring to it a strong legal education and policy oriented perspective.

Figure #1

PERCENT PLEADING NOT GUILTY

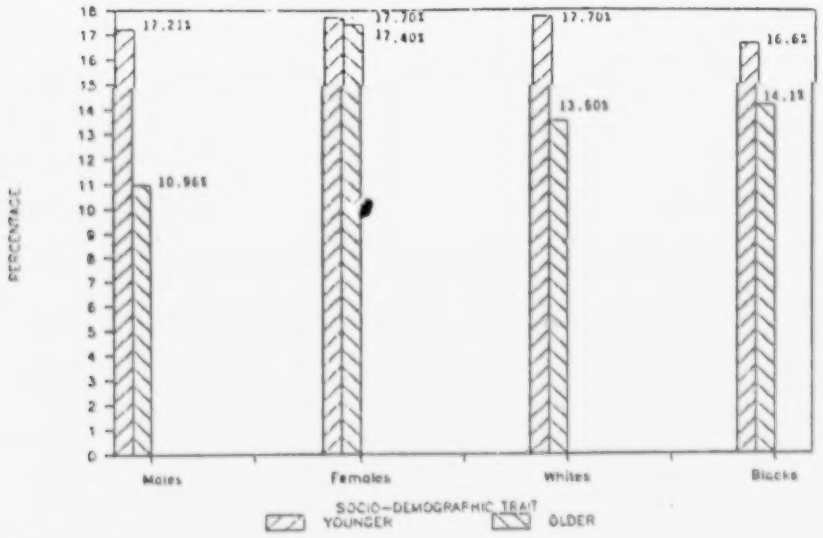

Figure #2

PERCENT REPRESENTED BY AN ATTORNEY

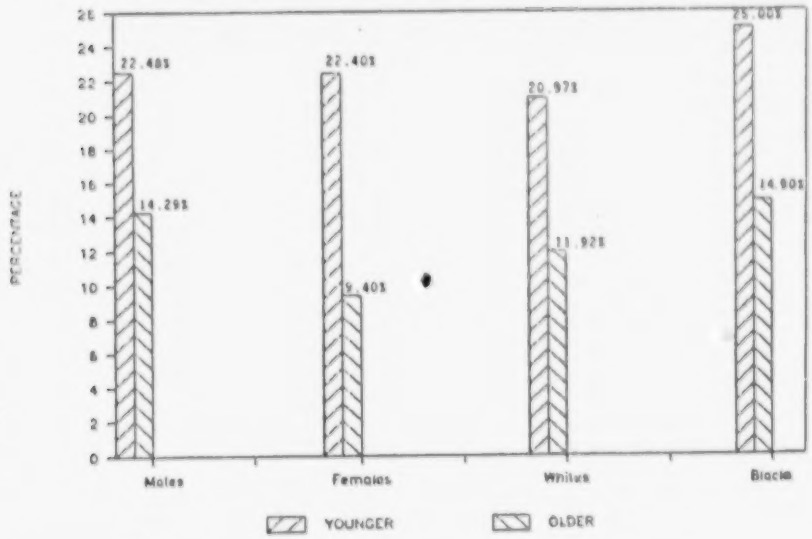

Figure #3

PERCENT REQUESTING A JURY TRIAL

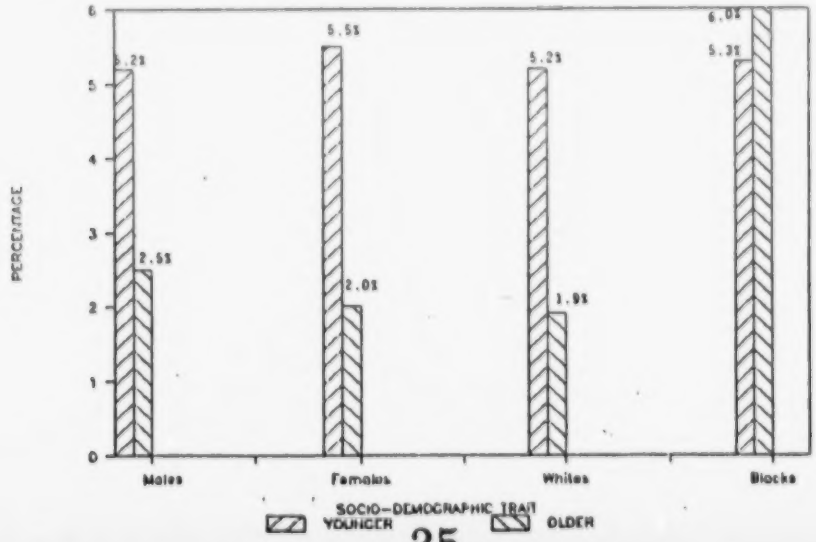

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Table #1. A Comparison of the Most Common Crimes For Which Those Sixty Years Of Age And Older Are Arrested.

	Year		
	1974	1979	1984
Crime			
Drunkenness	74,892	62,946	45,389
DWI	28,329	44,530	49,020
Larceny	9,854	21,138	26,139
Disorderly Conduct	11,469	12,976	13,666
Simple Assault	3,988	5,948	7,040
TOTAL UCR ARRESTS, PART 1 AND PART 2.	160,315	198,771	201,678

Table #2. Elderly Misdemeanant Defendants: Percent Pleading Not Guilty By Sex, Race, and Year

	Year		
	1974	1979	1984
Sex-			
Female	6.10	13.06	20.59
	(5/82)	(41/314)	(63/306)
Male	2.07	4.88	17.80
	(29/1400)	(60/1230)	(115/646)
Total	2.29	6.54	18.70
	(34/1482)	(101/1544)	(178/952)
Correlating Sex and Plea	X^2=6.60	27.37	1.00
	Phi^2=0.004	0.018	0.001
Race			
Black	1.51	5.26	21.95
	(4/265)	(14/266)	(27/123)
White	2.47	6.81	18.16
	(30/1217)	(87/1277)	(150/826)
Total	2.29	6.55	18.61
	(24/1482	(101/1543)	(177/951)
Correlating Race and Plea	X^2=0.89	0.86	1.47
	Phi^2=0.0006	0.0006	0.0015

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Table #3. Elderly Misdemeanant Defendants: Percent Represented By An Attorney By Sex, Race, and Year

	Year		
	1974	1979	1984
Sex			
Female	3.26	8.88	12.79
	(3/92)	(39/439)	(55/430)
Male	0.55	6.32	13.68
	(8/1453)	(83/1314)	(170/1243)
Total	0.71	6.96	13.45
	(11/1545)	(122/1753)	(225/1673)
Correlating Sex and Presence of an attorney:			
	X^2= 8.99	3.35	0.22
	Phi^2= 0.006	0.002	0.0001
Race			
Black	0.73	9.63	10.09
	(2/275)	(26/270)	(22/218)
White	0.71	6.48	13.91
	(9/1270)	(96/1482)	(202/1452)
Total	0.71	6.96	13.46
	(11/1545)	(122/1752)	(225/1672)
Correlating Race and Presence of an Attorney:			
	X^2= 0.887	3.50	4.67
	Phi^2= 0.0006	0.002	0.003

Table #4. Elderly Misdemeanant Defendants: Percent Of Those Pleading Not Guilty Who Request A Jury Trial By Sex, Race, and Year

	Year		
	1974	1979	1984
Sex			
Female	0.0	10.0	17.4
	(0/5)	(4/41)	(11/63)
Male	3.4	13.3	18.3
	(1/29)	(8/60)	(21/115)
Total	2.9	11.9	18.0
	(1/34)	(12/101)	(32/178)
Correlating Sex and Type of Trial:			
	X^2= —	0.33	0.02
	Phi^2= —	0.003	0.0001
Race			
Black	0.0	42.9	44.0
	(0/4)	(6/14)	(12/27)
White	3.3	6.9	13.3
	(1/30)	(6/87)	(20/150)
Total	2.9	11.9	18.1
	(1/34)	(12/101)	(32/177)
Correlating Race and Type of Trial:			
	X^2= —	13.13	14.96
	Phi^2= —	0.130	0.084

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